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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER(St) NO.24008 OF 2007

Mr.Jebakumar and Ors. ..Appellants
V/s
Rev.Jeyaraj and Ors. ..Respondents

Shri J.S.Kini i/b Suresh dubey for the Appellants
Shri Suresh Gole for the Respondents

CORAM:S.R.SATHE,J.
DATED:23rd Oct. 2007

P.C.:-

1. Heard both the learned Advocates at length.

2. Perused the papers.

3. The Appellants-original defendants in S.C.Suit No.5013 of 2003 have preferred this appeal against the order passed by the Judge, City Civil Court, Bombay in Notice of Motion No.57 of 2007 whereby the application filed by the defendants seeking mandatory direction to the plaintiffs to allow the defendant no.8 to perform the marriage of his daughter in church on Wednesday the 24th October 2007 between 7 a.m. to 3.00 p.m. was rejected.

4. At the outset it must be mentioned that the original suit is filed by the plaintiffs for declaration and injunction and admittedly in the said suit the trial Court while passing the order on Notice of Motion has fixed dates and timing when the plaintiffs'' group and defendants' group can offer prayers in the suit church. So, it is clear that the prayer which is now made by the defendant no.8 is in fact outside the scope of the relief granted to the parties by the trial Court and confirmed by the High Court.

5. It is true that at present there is a dispute as to whether plaintiffs are the owners of the suit church or defendants are owners of the suit church. When such is the position it was necessary for the Appellant and in particular defendant no.8 to show as to under which provision the Court can grant him permission to perform the marriage of his daughter in the church. It was necessary to place before the Court the rules and regulations on the basis of which such permission is

usually granted by the church. However, admittedly the Appellants original defendants have not at all placed any material in that behalf. Not only that but admittedly there is nothing to show that they had even submitted written application to the concerned authority having power to grant such permission.

6. It is really very strange to find that without obtaining necessary permission either from the concerned authority or from the Court the defendant no.8 has even issued the invitation cards mentioning therein that venue of the marriage is the suit church. This hasty action taken by the defendant no.1 cannot be justified and now at eleventh hour it is in fact not open for him to say that as he has already printed invitation cards he be permitted to perform the marriage of his daughter in the church. When defendant no.8 was fully aware of the fact that he and other members of his group are permitted to offer prayers in suit church during fixed hours by the court it was certainly not proper on his part to fix the timing of the marriage without obtaining permission in that behalf from the concerned authority or the court.

7. However, in view of fact that at times after following necessary procedure even the plaintiffs allow the parties to perform marriage in the church with a view that there should not be any hurdle in performance of the marriage on the day fixed, it was suggested to the learned Advocate for the Respondents as to whether they have any objection to the Appellants, in particular original defendant no.8 to perform marriage of his daughter within the hours fixed by this court when the defendants can offer prayer in the suit church. It was tried to be argued that asking the Appellants at this stage to change the time fixed by him for the marriage is inhuman. In my opinion, when the Appellant no.8 has in fact not bothered to issue the invitation card without obtaining necessary permission which is usual course while fixing the timing and venue of any marriage, if inconvenience is now caused to him, he must blame himself. On the contrary, it must be said that Respondents have fairly submitted they have no objection if the marriage is performed within the time fixed by this court when the plaintiffs' group is allowed to offer prayers.

8. In view of the above, I think that the order passed by the learned trial Judge has to be set aside. Hence I pass the following order :-

ORDER

i) The order passed by the trial Judge in Notice of Motion No.57 of 2007 is set aside. Instead, it is hereby directed that if the Appellants and in particular Appellant no.8 desire to use the suit

church in question for performing the marriage of his daughter, on Wednesday the 24th October 2007 within the hours which are already fixed by the trial Court on 30-8-2004 and confirmed by this court in AO No.855 of 2004, he is allowed to do so.

ii. It is made clear that while making use of the said church, the Appellant should not cause any damage to the church in any manner.

iii. A.O. disposed of accordingly.

. Parties to act on the authenticated copy of this order.

(S.R.SATHE,J.)

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